

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

COLEMAN CABLE, INC.,

Plaintiff,

v.

TDE, INC., a defunct Washington Corporation,  
and MONTE A. LEEN,

Defendants.

NO. 2:12-cv-01243-RSL

SECOND DISCOVERY ORDER AND  
PROTECTIVE ORDER

WHEREAS, in this action, plaintiff seeks, inter alia, indemnification from defendants for costs, expenses and attorney's fees expended to defend and resolve certain litigation and/or disputes that have not yet resulted in the initiation of formal litigation, and which are more further identified in the Complaint (hereafter the "Underlying Matters"); and

WHEREAS, defendants seek discovery of confidential settlement correspondence, mediation memoranda and related documents generated in the Underlying Matters (the "Settlement Materials") for the stated purpose of determining whether those matters arise from or result from liabilities of TDE, Inc., directly or indirectly, and/or are based upon, or arise out of, the operation of the business of TDE, Inc.; and

WHEREAS, defendants also seek discovery of confidential contractual agreements between plaintiff and The Home Depot, including Supplier Buying Agreements which identify

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1 themselves as documents containing confidential information of The Home Depot (the “Home  
2 Depot Contracts”), for the stated purpose of determining whether the Underlying Matter  
3 identified in the complaint as The Home Depot Indemnity Claim arises from or results from  
4 liabilities of TDE, Inc., directly or indirectly, and/or is based upon, or arises out of, the  
5 operation of the business of TDE, Inc.; and

6 WHEREAS, plaintiff asserts that the Settlement Materials and the Home Depot  
7 Contracts contain confidential information, including but not limited to proprietary contract  
8 information which, if disclosed to third parties would be or could be prejudicial to plaintiff  
9 and/or The Home Depot; and

10 WHEREAS, plaintiff has objected to defendants’ requests for production of the  
11 Settlement Materials and the Home Depot Contracts, but has agreed to withdraw its objections  
12 and produce the Settlement Materials and the Home Depot Contracts subject to a court order  
13 which protects their confidential nature and safeguards against disclosure thereof to third  
14 parties; and

15 WHEREAS, the Court agrees that the protection and safeguards desired by plaintiff and  
16 set forth below are reasonable and justified,

17 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

18 1. This Stipulated Protective Order shall apply to all confidential Settlement  
19 Materials produced by plaintiff to defendants in this action (“Confidential Information”).

20 2. All documents or discovery responses designated and labeled by plaintiff as  
21 “Confidential” and which are disclosed or produced to defendants in this action are entitled to  
22 confidential treatment as described below.

23 3. Plaintiff’s production of Confidential Information does not constitute a waiver  
24 of either party’s right to object to the admissibility of the Confidential Information or  
25 defendants’ right to dispute the confidential nature of the document.

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1           4. Defendants agree to maintain the confidentiality of the Confidential  
2 Information, which shall be used by defendants solely for purposes of this action and shall not  
3 be used or disclosed for any other purpose whatsoever.

4           5. Confidential Information shall be made available by defendants only to  
5 Qualified Persons (as defined at paragraph 6 of this Order).

6           6. “Qualified Person” means:

7           a. The Court and court personnel necessary to assist the Court in the execution of  
8 its functions in this action;

9           b. Defendant Monte Leen, individually, and in his capacity as corporate  
10 representative of defendant TDE, Inc.;

11           c. Defendants’ counsel of record in this action, and employees of such counsel to  
12 whom it is necessary that the Confidential Information be disclosed for purposes of acting in  
13 this action;

14           d. A deponent in this lawsuit, during the course of his or her examination, who  
15 authored or was otherwise responsible for the creation of the Confidential Information; and  
16

17           e. Any other person who is designated as a Qualified Person by subsequent Court  
18 order of or by written agreement of the parties.

19           7. Prior to the disclosure of any of the materials or information covered by this  
20 Protective Order to persons identified in paragraph 6 of this Protective Order, the attorney  
21 permitting disclosure shall obtain the receiving person’s signature on a copy of this Protective  
22 Order, indicating his or her name, business address, and phone number, and a statement by the  
23 person written on or attached to the Protective Order that recites “I have read this Protective  
24 Order, agree to be bound by its terms, and agree to submit to the jurisdiction of this Court for  
25 enforcement of the Protective Order.” A copy of each such signed Protective Order shall be

1 maintained by the counsel who permitted disclosure. This provision does not apply to the  
2 Court or its personnel.

3 8. Documents may be designated as “Confidential Information” by marking each  
4 document “CONFIDENTIAL.” Any copies made of Confidential Information produced in this  
5 action by plaintiff shall retain and display the “CONFIDENTIAL” mark or stamp.

6 9. Plaintiff shall designate as “Confidential” only such documents that it in good  
7 faith believes contain Confidential Information. Designation of information as Confidential  
8 Information may be challenged by defendants as follows:

9 a. If defendants disagree with a designation of a document as Confidential,  
10 they shall submit to plaintiff an objection, which can be made at any time, and the  
11 parties shall try first to resolve such dispute in good faith on an informal basis.

12 b. If the dispute cannot be so resolved within 10 days of plaintiff’s receipt  
13 of defendants’ objection, appropriate relief may be sought from the Court.

14 c. All Confidential Information is entitled to confidential treatment  
15 pursuant to the terms of this Order until and unless the parties agree in writing to the contrary  
16 or a contrary determination is made by the Court as to whether all or a portion of the  
17 Confidential Information is entitled to confidential treatment.

18 10. To the extent that Confidential Information is to be used in depositions, such  
19 information shall remain subject to the provisions of this Order, along with the transcript pages  
20 of the deposition testimony referring to the Confidential Information. A party may designate  
21 deposition testimony as confidential by so advising the parties during the deposition and  
22 confirming in writing within 7 days of receipt of the deposition transcript. If testimony is  
23 designated as confidential or Confidential Information is the subject of the deposition  
24 testimony, the Court Reporter shall bind the Confidential Information separately from the  
25 remainder of the deposition transcript and exhibits.

1           11. Any court reporter or transcriber who reports or transcribes testimony in this  
2 action shall agree that all Confidential Information designated as such under this Order shall  
3 remain confidential and shall not be disclosed by them, except pursuant to the terms of this  
4 Order, and that any notes or transcriptions of such testimony (and any accompanying exhibits)  
5 will be retained by the reporter or delivered to counsel of record.

6           12. In the event that before trial in this action, counsel for any party determines to  
7 submit to the Court any Confidential Information, such party shall redact all Confidential  
8 Information before submission to the Court. In the event that redaction is impossible, such  
9 party shall file a motion to file the Confidential Information under seal pursuant to Local Rule  
10 CR 5(g). If the underlying motion and accompanying affidavits and/or exhibits contain  
11 Confidential Information, both the motion and the affidavits and/or exhibits must be filed under  
12 seal. The Confidential Information shall remain confidential while the motion is pending,  
13 consistent with CR 5(g).

14           13. The inadvertent or unintentional disclosure of Confidential Information,  
15 regardless of whether the information was so designated at the time of disclosure, shall not be  
16 deemed a waiver in whole or in part of a claim of confidentiality or privilege, either as to  
17 specific information disclosed or as to any other information relating thereto or the same or  
18 related subject matter.

19           14. Plaintiff shall give notice promptly following the discovery of any inadvertent  
20 disclosure, and defendants shall, following receipt of such notice, take all reasonable steps to  
21 preserve the confidentiality of the information against further disclosure or dissemination.

22           15. Within 30 days of the conclusion of this action by settlement, judgment, or  
23 exhaustion of all appeals, each original and every copy of each document which contains  
24 Confidential Information shall either be returned to plaintiff or destroyed. This provision does  
25 not apply to documents filed with the Court.



***Attorneys for Defendants:***

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